

September 6, 2005

Barbara Booth Grunwald  
Deputy County Counsel  
[Address Redacted]  
Fresno, CA 93721-2128

**Re: Your Request for Advice  
Our File No. A-05-171**

Dear Ms. Grunwald:

This letter is in response to your request for advice, on behalf of Fresno County Supervisor and Children and Families Commission member, Susan B. Anderson, regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that the Fair Political Practices Commission does not act as a finder of fact when providing advice; this advice is based solely on the facts you provide. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

In addition, you have requested advice which potentially entails the applicability of Government Code section 1090 to your situation. However, the Commission's authority is limited to interpreting and enforcing the provisions of the Act, and section 1090 is not included within the provisions of the Act. We must therefore refer you to the Attorney General's office for questions regarding Government Code section 1090.

### **QUESTIONS**

1. Does County Supervisor Anderson, in her capacity as either a supervisor or as a board member appointed to the Children and Families Commission of Fresno County, have a disqualifying conflict-of-interest in a governmental decision relating to a \$5,000 grant to a private, non-profit school on whose board of directors she sits and at which her daughter is a student?

2. If the answer to Question One is "yes," does Ms. Anderson have to follow the procedures of abstention incumbent upon county supervisors (as 87200 filers) or those

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

procedures applicable to her fellow, non-87200 filers, Children and Families board members?

### CONCLUSIONS

1. No. County Supervisor Anderson, in her capacity as either a supervisor or as a board member appointed to the Children and Families Commission of Fresno County, does not have a disqualifying conflict-of-interest in the described governmental decision. Though the contemplated governmental decision relates to a \$5,000 grant to a private non-profit school on whose board of directors Supervisor Anderson sits and at which her daughter is a student, the grant would not have an impact of \$250 or more in a 12-month period on her personal finances.

2. Since the answer to Question One is “no,” the answer to Question Two is moot.

### FACTS

The Children and Families Commission of Fresno County (“C&F Commission”) is planning at its September 7, 2005 meeting to vote on the award of a grant of \$5,000 to Carden School for preschool services.

A county children and families commission is required to have members from several categories, including one member of the board of supervisors. (Health & Safety Code section 130140(a)(1)(A)(ii).) Susan B. Anderson, a member of the Fresno County Board of Supervisors, has been appointed by her fellow supervisors to sit on the C & F Commission. Carden is a private preschool and elementary school in Fresno which is tax-exempt under section 501(c)(3) of the Internal Revenue Code.

Supervisor Anderson also serves as a member of the board of directors of Carden School. She does not receive any salary or per diem for her service as a board member. You were not advised whether she receives reimbursement for travel expenses, if any.

In addition, Supervisor Anderson is also the parent of a student at Carden. Supervisor Anderson pays tuition to the private school for her daughter to attend Carden’s elementary school division. (Note: The contemplated \$5,000 grant would go to Carden for *preschool* services.) Carden currently has 174 students: 30 in the preschool division and 144 in the Kindergarten through 8<sup>th</sup> Grade division. As of August 5, 2005, Carden School’s web site indicated that tuition was \$565 per school month in 2004-05, but did not indicate the tuition planned for 2005-06. Parents are required to volunteer in the school, but you assume that Supervisor Anderson does not provide any volunteer services in the preschool.

In a September 1, 2005 communication to Commission counsel, you indicated that Supervisor Anderson asserted that if the \$5,000 grant were made it would not affect her personal finances in the amount of \$250 or more in any 12-month period.

### **ANALYSIS**

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence governmental decisions in which the official has a financial interest.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Reg. 18700(b).) The general rule, however, is that a conflict of interest exists whenever a public official makes a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

#### **Steps 1 & 2: Is The Individual A Public Official Making, Participating In Making, Or Influencing A Governmental Decision?**

As a Fresno County Supervisor and member of the C & F Commission, Ms. Anderson is a public official under the Act. (Section 82048.) As a county supervisor and appointed member of the C & F Commission, Ms. Anderson occupies positions which require her to make, participate in making, and influence governmental decisions regarding contemplated actions of the C & F Commission.

#### **Step 3: Does The Public Official Have A Potentially Disqualifying Economic Interest?**

A public official has a financial interest in a decision within the meaning of section 87103 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any of the following:

- A public official has an economic interest in a business entity in which he or she has a direct or indirect investment of \$2,000 or more (Section 87103(a); Reg. 18703.1(a)), or in which he or she is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); Reg. 18703.1(b));
- An economic interest in real property in which he or she has a direct or indirect interest of \$2,000 or more (Section 87103(b); Reg. 18703.2);

- An economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c); Reg. 18703.3);
- An economic interest in any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (Section 87103(e); Reg. 18703.4);
- An economic interest in his or her personal finances, including those of his or her immediate family -- this is the ‘personal financial effects’ rule. (Section 87103; Reg. 18703.5.)

***Ms. Anderson Cannot Have An Economic Interest In The School As A “Business Entity”***

Because Carden School is a non-profit organization, it is not a “business entity.” A “business entity” under the Act is defined as “any organization or enterprise operated for profit . . . .” (Section 82005.) Therefore, neither Ms. Anderson nor anyone else can have an economic interest in Carden School as a business entity. (*Ibid.*; see Section 87103(a) and (d).)

***Ms. Anderson Has No Economic Interest In The School As A “Source Of Income”***

You indicate that Ms. Anderson does not receive any salary or per diem for her service as a member of the board of directors for the school. You also indicate that you not aware as to whether Ms. Anderson receives reimbursement for her travel expenses, if any, as a board of director for the school. But even if one assumes that she receives travel expenses from the school, such monies do not constitute “income” under the Act.

The Act states that “income” does not include “[s]alary and reimbursement for expenses or per diem . . . received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.” (Section 82030(b)(2) [emphasis added].)

Since reimbursement from a 501(c)(3) non-profit corporation for travel expenses does not constitute “income” under the Act, even if we assume that Ms. Anderson receives travel expense reimbursement from Carden School, this would not constitute a “source of income” for purposes of conflict-of-interest analysis. (See section 87103(c).)

***Ms. Anderson Could Experience A Personal Financial Effect As A Result Of A Decision By The C & F Commission To Grant Money To The School***

A public official has an economic interest in his or her personal finances, including those of his or her immediate family. (Section 87103; Reg. 18703.5.) This is called the “personal financial effects” rule. Since Ms. Anderson has a daughter that attends Carden School, and since tuition there cost Ms. Anderson \$565 per school month during the 2004-2005 academic year, any award of grant money to the school could have a personal financial effect on Ms. Anderson.

The remainder of our analysis will focus only upon whether the proposed governmental decision would have a reasonably foreseeable material financial effect on Ms. Anderson’s personal finances.

**Step 4: Is The Economic Interest Identified Directly Or Indirectly Involved In The Governmental Decision?**

In order to determine if a governmental decision’s reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official’s economic interest is directly involved or indirectly involved in the governmental decision. (Reg. 18704(a).) Since the only possible economic interest of Ms. Anderson’s that could be identified comes within the ambit of the “personal financial effects” rule, Ms. Anderson’s economic interest is deemed to be *directly* involved. (Regs. 18704(a)(3) and 18704.5.)

**Steps 5 & 6: The Materiality Standard & Reasonable Foreseeability**

A conflict of interest may arise only when the reasonably foreseeable impact of a governmental decision on a public official’s economic interests is material. (Reg. 18700(a).) Different standards apply to determine whether a reasonably foreseeable financial effect will be material. (See Reg. 18705(a).)

One must also determine whether it is reasonably foreseeable that the financial effect of the governmental decision upon the identified economic interest will actually occur. The effect of a decision is considered “reasonably foreseeable” if there is a substantial likelihood that it will occur (Reg. 18706(a)), and such an analysis needs to be determined according to the facts involved in the particular governmental decision. A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

The materiality standard applicable to an analysis of personal financial effects of a governmental decision upon the economic interest of a public official is contained in regulation 18705.5. (Reg. 18705(a)(5).) Regulation 18705.5 states that a “reasonably foreseeable financial effect on a public official’s personal finances is material if it is at least \$250 in any 12-month period.”

Ms. Anderson asserts that if the \$5,000 grant were made it would not affect her personal finances in the amount of \$250 or more in any 12-month period. Therefore, we conclude that her participation in the C & F Commission deliberations or voting regarding the proposed \$5,000 grant would not create a reasonably foreseeable and material financial effect on her personal finances.

**Steps 7 & 8: Public Generally & Legally Required Participation**

You have not presented any facts indicating that either the “public generally” or “legally required participation” exceptions would be applicable herein. (See Regs. 18707 et seq. and 18708 et seq.)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Andreas C. Rockas  
Counsel, Legal Division

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